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DEPARTMENT OF COMMERCE

International Trade Administration

A-201-845

Sugar from Mexico: Notice of Termination of Amendment to the Agreement Suspending the Antidumping Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On October 18, 2019, the United States Court of International Trade (CIT) issued a final judgment in *CSC Sugar LLC v. United States*, Ct. No. 17-00215, Slip Op. 19-132 (CIT October 18, 2019) (*CSC Sugar II*), vacating the 2017 amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico. Commerce is now terminating the amendment consistent with the Court's order.

DATES: Applicable December 7, 2019.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon, Bilateral Agreements Unit, Office of Policy and Negotiations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0162.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 2014, Commerce and the signatory producers/exporters accounting for substantially all imports of sugar from Mexico signed the Agreement Suspending the

Antidumping Duty Investigation on Sugar from Mexico (AD Agreement).¹ Subsequent to this date, between June 2016 and June 2017, Commerce and the signatory producers/exporters accounting for substantially all imports of sugar from Mexico held consultations to address concerns raised by the domestic industry and to ensure that the AD Agreement met all of the statutory requirements for a suspension agreement, *e.g.*, that suspension of the investigation was in the public interest, including the availability of supplies of sugar in the U.S. market, and that effective monitoring was practicable. The consultations resulted in Commerce and the signatory producers/exporters accounting for substantially all imports of sugar from Mexico signing the amendment to the AD Agreement on June 30, 2017, and it was subsequently published in the *Federal Register*.²

CSC Sugar LLC (CSC Sugar) challenged Commerce's determination to amend the AD Agreement by contending that Commerce did not meet its obligation to file a complete administrative record.³ Specifically, CSC Sugar argued that Commerce failed to memorialize and include in the record *ex parte* communications between Commerce officials and interested parties (including the domestic sugar industry and representatives of Mexico), as required by section 777(a)(3) of the Tariff Act of 1930, as amended (the Act).⁴

The CIT agreed with CSC Sugar and ordered Commerce to supplement the administrative record with any *ex parte* communications regarding the *AD Amendment*.⁵ CSC Sugar subsequently filed a motion for judgment on the agency record arguing that Commerce's failure, during the consultations period, to maintain contemporaneous *ex parte* communication

¹ See *Sugar From Mexico: Suspension of Antidumping Duty Investigation*, 79 FR 78039 (December 29, 2014) (AD Agreement).

² See *Sugar From Mexico: Amendment to the Agreement Suspending the Antidumping Duty Investigation*, 82 FR 31945 (July 11, 2017) (AD Amendment).

³ See *CSC Sugar II* at 4.

⁴ *Id.*

⁵ *Id.* (citing *CSC Sugar LLC v. United States*, 317 F. Supp. 3d 1334, 1345 (CIT 2018)).

memoranda, in accordance with section 777(a)(3) of the Act, could not be adequately remedied by Commerce's delayed and incomplete supplementation of the record.⁶

The CIT found that Commerce's failure to follow the recordkeeping requirements of Section 777 of the Act cannot be described as "harmless."⁷ The CIT found that this recordkeeping failure substantially prejudiced CSC Sugar.⁸ On that basis, the CIT stated that the *AD Amendment* must be vacated.⁹

Termination of *AD Amendment*

Consistent with the CIT's ruling in *CSC Sugar II*, Commerce is terminating the *AD Amendment* prospectively.¹⁰ Accordingly, as of December 7, 2019, the unamended AD Agreement¹¹ is in force and effective, and the *AD Amendment* has no force or effect.

Dated: December 6, 2019.

/s/ Jeffrey I. Kessler

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁶ See *CSC Sugar II* at 4.

⁷ *Id.* at 11-12.

⁸ *Id.* at 12.

⁹ *Id.*

¹⁰ Commerce is terminating the *AD Amendment*, effective December 7, 2019. Because suspension of liquidation does not occur while the AD Agreement is in force, termination of the *AD Amendment* shall be prospective in effect. Accordingly, the AD Agreement, as signed on December 19, 2014, applies to all contracts for sugar from Mexico exported from Mexico on or after December 7, 2019.

¹¹ See AD Agreement.

